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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91205046
Party	Defendant Ate My Heart Inc.
Correspondence Address	BRAD D ROSE PRYOR CASHMAN LLP 7 TIMES SQ, FL 3 NEW YORK, NY 10036-6569 UNITED STATES lbuckley@pryorcashman.com, rklarberg@pryorcashman.com, tmdocketing@pryorcashman.com, brose@pryorcashman.com, tlee@pryorcashman.com, tmdocketing@pryorc
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Signature	/Brad D. Rose/
Date	04/09/2014
Attachments	AMH's Reply in Support of Motion.pdf(81421 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application No. 85215017  
for the mark HAUS OF GAGA

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CHRISTINA SUKLJIAN,	:	
	:	
Opposer,	:	Opposition No. 91205046
	:	
v.	:	
	:	
ATE MY HEART, INC.,	:	
	:	
Applicant.	:	
	:	
ATE MY HEART, INC.,	:	
	:	
Petitioner,	:	Cancellation No. 92055279
	:	
v.	:	
	:	
CHRISTINA SUKLJIAN,	:	
	:	
Respondent.	:	
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**APPLICANT/PETITIONER’S REPLY IN SUPPORT OF ITS REQUEST FOR  
AN EXTENSION OF TIME TO DEPOSE OPPOSER/RESPONDENT**

Applicant/Petitioner Ate My Heart, Inc. (“AMH”), by and through its attorneys Pryor Cashman LLP, submits this Reply in further support of its Motion for an Extension of Time to Depose Opposer/Respondent Christina Sukljian (“Sukljian”) (the “Motion”).

**PRELIMINARY STATEMENT**

AMH noticed Sukljian’s deposition within the time period set by the Board in its discovery schedule, but due to unforeseen, exigent circumstances, AMH needed to postpone the deposition by a couple of days. As is evident from her opposition to AMH’s Motion, Sukljian

received the communications sent by AMH's counsel seeking to change the date of the deposition, but she deliberately failed and refused to respond. This inability to communicate with Sukljian made it impossible for AMH to take Sukljian's deposition during the allotted time period, thereby necessitating this Motion.

Sukljian opposes the Motion on two grounds: (1) that discovery has been taken place for two years; and (2) that she showed up for a deposition that AMH had noticed last September, but that AMH's counsel was not there. Both grounds are wholly without merit.

As the Board is aware, the fact that discovery has not been completed in two years is because Sukljian failed to participate in discovery for most of those two years, prompting two sanctions motion made by AMH and the Board's issuance of sanctions against her. Indeed, Sukljian did not serve proper discovery responses until this February 2014, which left AMH with only a couple of weeks to analyze the responses and depose Sukljian.

Further, Sukljian's statement that she showed up for a deposition in September 2013 is not credible. Surely she would have either complained to AMH, or mentioned it in response to AMH's sanctions motion, in which AMH advised the Board that it noticed Sukljian's deposition last September, pointing out that it did not go forward because Sukljian refused to respond to counsel's communications seeking to confirm that Sukljian could and would appear on the noticed date.

In short, Sukljian has provided no reason why the Board should not grant AMH's first request to extend only one component of the discovery schedule, and AMH's Motion should be granted.

## ARGUMENT

On multiple occasions, AMH attempted to contact Sukljian to re-schedule her deposition which had been noticed for March 5, 2014, within the period of time the Board had allotted. On March 3, 2014, two days prior to the noticed deposition date, AMH sent the following message to Sukljian at the e-mail address she put on record with the TTAB:

As you are aware, we are scheduled to take your deposition this Wednesday, March 5, 2014. Due to exigent circumstances, we are no longer able to take your deposition on that date.

We would like to re-schedule the deposition at a mutually convenient time and location. Please let us know your availability in the near future.

Please also confirm your receipt of this message. Thank you in advance.

AMH is now aware that, as suspected, Sukljian received this e-mail because she attached it to her opposition papers as Exhibit C. As has been her *modus operandi* throughout this proceeding, however, Sukljian chose not to respond to it.

Furthermore, as she admits in her opposition papers, after Sukljian failed to respond to the March 3, 2014 e-mail, AMH's counsel, Ryan Klarberg, also attempted to contact her by telephone on two separate occasions prior to the scheduled deposition date. As set forth more fully in AMH's Motion, on both occasions, a receptionist refused to put the call through to Sukljian. Therefore, on both occasions, Mr. Klarberg left a message with the receptionist requesting that Sukljian return his phone calls to discuss the re-scheduling of the deposition. Mr. Klarberg provided Sukljian's receptionist with his full name, law firm name and direct telephone number so that Sukljian would have all the information she needed to return Mr. Klarberg's phone calls. Again, Sukljian admits in her opposition papers that she received Mr. Klarberg's telephone messages. She just refused to return the calls.

Thereafter, on March 7, 2014, AMH's counsel sent Sukljian a letter:

As you may be aware, we have attempted on several occasions to contact you regarding the postponement and re-scheduling of your deposition. Specifically, we emailed you on March 3, 2014 at the email address <info@zela.com>, which is the email address provided as your contact email on the TTAB website. Furthermore, on both March 3 and March 4, 2014, I placed a telephone call to you at 518-436-1833. In both instances, however, I was advised by your secretary that you were unavailable. On both telephone calls, I subsequently left my full name, law firm name and telephone number, and requested the secretary to please have you return my call as soon as possible to discuss the rescheduling the deposition. You have neither responded to my email nor returned my phone calls.

A true and correct copy of the letter sent to Sukljian on March 7, 2014 is attached hereto as Exhibit A. Once again, Sukljian failed and refused to respond to this letter.

In her effort to avoid being deposed, Sukljian has now stooped to the lowest possible level: telling tall tales to the Board. Specifically, she says in her opposition that she had actually shown up on the date and time and at the location where AMH had noticed her deposition the first time, in September of 2013. As discussed in more detail below, it is telling that Sukljian never bothered to mention this "fact" in response to AMH's second sanctions motion, in which AMH advised the Board that she failed to confirm that she could appear for a deposition on the day for which it was noticed.<sup>1</sup>

Surely, if it were true that Sukljian had actually shown up for that deposition, but that AMH's counsel did not, Sukljian would have mentioned it in her opposition to AMH's motion for sanctions. Yet, she did not. Nor did she ever bother to tell AMH's counsel that she had appeared for a deposition on the September date, but that it did not go forward because AMH's

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<sup>1</sup> AMH sought Sukljian's confirmation of her attendance because AMH unilaterally noticed the date. As a courtesy, if she had told us she was unavailable on that date, we would have changed the date to one that was mutually convenient. The Board indicated in its Order on AMH's second sanctions motion that it was perplexed why AMH's counsel did not just go to take the deposition on the unilaterally noticed date without knowing whether or not Sukljian would be there, and then move for sanctions if she failed to show up. The Board should understand, however, that Sukljian resides in Albany, New York. Counsel's traveling to Albany, which would have required an overnight stay in a hotel in order to commence the deposition in the morning, and hiring a court reporter and videographer for a deposition where the deponent might not show up, would not have been an economically sound decision for AMH.

counsel failed to show. Considering these objective facts which strongly undercut her current claim, AMH submits that if the Board intends to consider Sukljian's incredible statement, she should be required to make the statement in an affidavit, under oath and subject to penalty for perjury.

More specifically, Sukljian states in her opposition to this Motion that on September 19, 2013, she "went to the scheduled deposition at 10:00 a.m. at the Albany, New York Marriott, however the Petitioner was not there." Sukljian fails to explain why she did not respond to two letters sent by AMH's counsel last September seeking confirmation that she would appear for a deposition at the appointed date, time and location. If Sukljian had intended to appear, it would have behooved her to so advise AMH's counsel to avoid a situation in which she appeared but AMH's counsel did not. By the same token, AMH sought Sukljian's confirmation to avoid a situation in which its counsel appeared for the deposition, hundreds of miles from New York City, with court reporter and videographer in tow, but Sukljian did not show up. Scheduling a deposition is not supposed to be a game. Typically, parties confer regarding mutually convenient dates and schedule the deposition on that date. If the date becomes inconvenient for one or both parties, they confer and agree on a mutually convenient alternative date. But with Sukljian, everything is a game.

Moreover, despite multiple opportunities that she has had to present this information to the Board in the six months that have passed since September of 2013, this is the very first time Sukljian has ever said that she appeared for a deposition on September 19, 2013. Significantly, Sukljian never sent AMH an e-mail or a letter, nor did she ever call or otherwise communicate that she attended the deposition, or that AMH's counsel was not there. It is simply inconceivable that Sukljian would not have complained either to the Board or AMH if she truly "went to the

scheduled deposition at 10:00 a.m. at the Albany, New York Marriott.” Sukljian’s unsworn statement blinks reality.

As the Board noted in its August 5, 2013 Order, which addressed Sukljian’s failure to comply with the Board’s *previous* order compelling discovery in these proceedings, the Board warned Sukljian that it “will not tolerate game playing or evasiveness in discovery.” Board’s Order (Aug. 5, 2013) at p. 11. Approximately half of a year later, Sukljian’s game playing and evasiveness in discovery nonetheless continues. Sukljian’s attempt to avoid a deposition by claiming that “[d]iscovery has been open for nearly 2 years” is ironic. Discovery has been open for this extensive period of time because of *Sukljian’s* “game playing” and “evasiveness.” Sukljian has provided no bases upon which the Board should deny AMH’s reasonable first request to extend discovery solely to permit AMH’s counsel to take her deposition. AMH’s Motion should be granted.


## CONCLUSION

Accordingly, for the reasons set forth herein, AMH respectfully requests the Board to grant AMH's Motion, and further respectfully requests the Board to reset the proceedings' dates accordingly.

Dated: New York, New York  
April 9, 2014

Respectfully submitted,

PRYOR CASHMAN LLP

By:   
\_\_\_\_\_  
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Lisa M. Buckley  
Ryan S. Klarberg  
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New York, New York 10036  
(212) 421-4100

*Attorneys for Ate My Heart, Inc.*



# Exhibit A



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March 7, 2014

**VIA FIRST CLASS MAIL**

Ms. Christina Sukljian  
13 Manor Street  
Albany, New York 12207

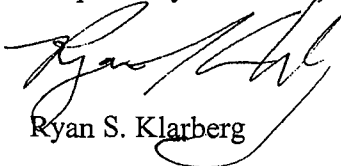
**RE: *Christina Sukljian v. Ate My Heart, Inc.*, Opposition No. 91/205,046  
*Ate My Heart, Inc. v. Christina Sukljian*, Cancellation No. 92/055,279**

Dear Ms. Sukljian:

As you may be aware, we have attempted on several occasions to contact you regarding the postponement and re-scheduling of your deposition. Specifically, we emailed you on March 3, 2014 at the email address <[info@zela.com](mailto:info@zela.com)>, which is the email address provided as your contact email on the TTAB website. Furthermore, on both March 3 and March 4, 2014, I placed a telephone call to you at 518-436-1833. In both instances, however, I was advised by your secretary that you were unavailable. On both telephone calls, I subsequently left my full name, law firm name and telephone number, and requested the secretary to please have you return my call as soon as possible to discuss the rescheduling the deposition. You have neither responded to my email nor returned my phone calls.

Accordingly, we have decided to proceed with filing a motion for an extension of time to arrange for your deposition.

Respectfully submitted,



Ryan S. Klarberg

**CERTIFICATE OF SERVICE**

I certify that on April 9, 2014, a true and correct copy of the foregoing APPLICANT/  
PETITIONER'S REPLY IN SUPPORT OF ITS REQUEST FOR AN EXTENSION OF TIME  
TO DEPOSE OPPOSER/RESPONDENT was mailed by First Class Mail, postage prepaid to:

Christina Sukljian  
13 Manor Street  
Albany, NY 12207

  
\_\_\_\_\_  
Ryan Klarberg